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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/367,629 10/18/99 GUPTA

A 9403-2

EXAMINER

HM12/0522

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SUITE 1800
PHILADELPHIA PA 19102

CHAUDHRY, M

ART UNIT

PAPER NUMBER

1623

DATE MAILED:

05/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/367,629	Applicant(s) GUPTA, AJAY	
	Examiner Mahreen Chaudhry	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-43 and 48-50 is/are allowed.
- 6) ☒ Claim(s) 44-47 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 20) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,563,126 issued to Allen et al. in 1996. Allen et al. disclose vitamin preparations comprising vitamin B₁₂, vitamin B₆ and folic acid (Column 1, Lines 14-19).

Claims 44-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,635,199 issued to Trimbo et al. Trimbo et al. a solution for nutritional support consisting of vitamin B₁₂, vitamin B₆, folic acid, vitamin C, thiamine and carnitine (Column 6, Lines 20-30).

Neither Allen et al. or Trimbo et al. disclose the use of these composition in dialysis solutions; however, the intended use of a product is not patentable. Applicant argues that the distinction between the vitamin solutions taught by Allen et al. and Trimbo et al. and that recited in the claims is that the claims are directed to vitamin concentrate solutions that must be diluted before use. It would, however, have been obvious to one having ordinary skill in the art to have prepared vitamin solutions comprising the same components as taught by Allen et al. and Trimbo et al. and that these solutions could be either dilute or concentrated depending on the water content since vitamin concentrate solutions are well known in the art.

Art Unit: 1623

Allowable Subject Matter


3. Applicant's arguments regarding claims 1-43 and 48-50 have been considered and are persuasive. Claims 1-43 and 48-50 are considered allowable over the prior art since no reference of record discloses a dialysis solution containing vitamin B₆, folic acid, thiamine or vitamin B₁₂ or a method of treating a vitamin deficiency by administering such a dialysis solution. A notice of allowability will be sent upon cancellation of the rejected claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mahreen Chaudhry whose telephone number is (703) 605-1200. The examiner can normally be reached on Monday – Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701 . The official fax phone number for the organization where this application is proceeding or assigned is (703) 308-4556 or 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

mc
May 17, 2001


PAUL J. KILLOS
PRIMARY EXAMINER
AU-1623